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SUBJECT: ATTACK OF THE ANTI-RAIDERS

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REFTEL: MOSCOW 01349

1. (SBU) Summary: Corporate raiding, the takeover of businesses by criminal means, is a plague on the Russian economy (REFTEL A) and combating it must be a central part of any anti-corruption program. Last week, the National Anti-Corruption Committee (NACC), an NGO which has been tasked by the government with drafting anti-raiding legislation, released its report and proposals. At the same time, the Ministry of Internal Affairs (MVD) also presented its own anti-raiding proposals. Upon scrutiny, both sets of proposals appear to be poorly drafted and would likely do little to eliminate raiding. It is not clear if this poor drafting is the product of a well intentioned but misguided effort or a deliberate attempt to protect the interests of raiders. End Summary.

NACC

2. (SBU) On September 4, the National Anti-Corruption Committee (NACC) (which is, despite its official sounding name, an NGO) held a press conference to unveil its recent study of raiding and its proposals to address the problem. According to the NACC's Chairman, Kirill Kabanov, the Committee's study was prepared at the request of President Medvedev and in conjunction with the Phoenix Group (a private consulting group), Transparency International, and the QAgency for Anti-Crisis Technologies and Investments. Q The Committee's report, Kabanov said, is based on a survey of over 100 businesses.

3. (SBU) Many of the Committee's findings were familiar and have been reported widely both in the press and by us. (REFTEL A). For example, the Committee's report details a variety of common raiding schemes, most of which involve the falsification of internal corporate documents to seize control of a company or its assets, followed by the rapid transfer of the stolen property to an ostensible good faith purchaser from whom it cannot be recovered. The Committee's study also echoed other reports to the effect that Russia has developed a class of professional raiders who, for set fees, can help companies illegally acquire target companies. For example, according to the report, changing a target company's incorporation documents costs \$10,000, opening a criminal case costs \$30,000, closing a criminal case costs \$50,000, and obtaining a needed judicial decision costs \$35,000.

4. (SBU) Not surprisingly, the Committee identified official corruption as one of the main causes of raiding and concluded that corruption and raiding are inextricably intertwined and cannot be dealt with independently. At the press conference, Kabanov criticized the government for requesting separate reports on

corruption and raiding and said that this indicates a lack of understanding of both problems. Kabanov also said that official government organs have become more deeply involved in raiding recently and noted a dangerous alliance between the FSB and MVD. The Committee's report also set forth in detail the different roles played by corrupt government agencies in raiding schemes.

15. (SBU) Kabanov also noted the rise, in recent years, of merchandise raiding, which is generally understood to refer to the seizure by law enforcement of consumer items followed by the re-sale of those items on the black market. As an example, he pointed to the notorious 2006 Motorola case in which MVD officials seized 167,000 Motorola phones on the pretext that they created a potential health risk to users. (Note: Embassy intervention helped to secure the return of some of the phones. However, some of the phones were subsequently found in local markets where they were being offered for sale. End Note.)

16. (SBU) In addition to this familiar territory, the Committee also focused on other causes of raiding which have been less widely discussed. For example, Svetlana Vasina of the Phoenix Group pointed to the weak legal protection of minority shareholders rights and abuse of those rights by majority shareholders. Reflecting this viewpoint, the Committee's report at one point even appears to justify raiding by minority shareholders, stating that they are often left with no choice but to turn to raiders after discovering that they have been defrauded by majority shareholders.

17. (SBU) Elena Panfilova of Transparency International said that Russian corporate governance, despite being the subject of massive attention and assistance efforts in the late 1990s and early part of this century, still does not meet world standards, a factor which

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facilitates raiding. Almost every company, she said, has engaged in at least minor defalcations at some point. Raiders use these violations as a way to initiate regulatory inspections or criminal investigations of target businesses. Through these investigations, they obtain compromising and confidential information about the subject business, which they use in the raid. Therefore, she and other members of the Committee, argued, companies must clean up their own acts in order to avoid being targeted by raiders. Panfilova and Vasina also said that the unreliability and corruption of the civil justice system forces aggrieved parties to turn to criminals to resolve ordinary business disputes.

18. (SBU) The Committee noted another allegedly negative trend unjustified accusations of raiding. Kabanov and Vasina both said that businessmen are now quick to attack legitimate competitors as raiders in order to discredit them and said that corporate directors and majority shareholders raise the spectre of raiding in order to refuse legitimate disclosure requests by minority shareholders. They also expressed concern that new anti-raiding legislation would be used by businessmen to simply settle scores among themselves.

19. (SBU) The Committee's report concludes that law enforcement lacks the tools needed to combat raiding, including a legal definition of raiding and a specific Criminal Code article addressing it. Therefore, the Committee proposes the introduction of a new article in the Criminal Code defining raiding as acts designed to give a legitimate appearance to the illegal (accomplished through illegal means) transfer to the actor or a third party of property rights, rights to the results of intellectual activity, and also rights to individualization (of intellectual rights) as well as, the illegal acquisition of the right to carry out managerial functions in a commercial or other organization and making it punishable by up to 6 years incarceration (assuming no aggravating circumstances).

SILOVIKI PROPOSAL

10. (SBU) The day before the Committee unveiled its report, the

MVDQs Investigative Committee presented its own set of anti-raiding recommendations. These proposals appear similar to a proposal drafted by Duma Deputy Gennady Gudkov of the Security Committee and introduced in the Duma in March by Gudkov and two other Deputies, Andrei Lugovoi and Aleksander Khinshteyn. According to reports (we have not yet been able to obtain the original text), the Gudkov/MVD legislation would also introduce a new article in the Criminal Code on raiding, defined as the Qcommission of a crime connected with the illegal acquisition of the right of ownership, and/or use, and/or management of the shares of participants in a legal entity in the foundational capital of a legal entity and/or voting shares of a stock company.Q In addition to this stand-alone article, it would also make raiding an aggravating circumstance for certain other crimes. For example, falsification of documents committed as part of a raiding scheme would carry a maximum penalty of 20 years incarceration (currently falsification carries a maximum of only four months).

ANALYSIS OF PROPOSED LEGISLATION

¶11. (SBU) Both the NACC and Gudkov proposals appear inadequate. The NACCQs proposed definition of raiding appears to be focused exclusively on the laundering aspects of raiding (i.e., the process of making illegally acquired assets appear legitimate) while failing to address the illegal acquisition in the first place. Moreover, the wording of the definition is so convoluted that it is hard to imagine how it could be used in practice. Finally, the proposed penalties (up to 6 years incarceration without aggravating circumstances) are insufficient and roughly equivalent to the penalties provided for by the anti-fraud articles of the Criminal Code that are currently used as a stopgap to prosecute raiding.

¶12. (SBU) The NACCQs recommendations also fail to address other key aspects of raiding such as falsification of documents and criminal prosecutions that have been illegally bought and paid for. When asked about these issues at the press conference, Committee members explained that they were concerned that anti-raiding legislation could be easily misused by aggrieved businessmen to Qsettle scores and therefore were reluctant to support too much anti-raiding legislation, especially legislation carrying severe penalties.

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¶13. (SBU) Although, in contrast to the NACCQs proposal, the Gudkov/MVD definition appears appropriately focused on the acquisition, rather than laundering, aspect of raiding, it too appears unworkable in practice. For example, it simply refers to Qcrimes connected with the illegal acquisition of property,Q without defining the crimes or defining what makes acquisition of property illegal in the first place. (By contrast, the U.S. RICO law criminalizes acquiring a business through a Qpattern of racketeering activity,Q which is defined as the commission of two or more specified predicate crimes within a ten year period.)

IS THE FOX GUARDING THE HENS ?

¶14. (SBU) It is not clear what is behind the apparently poor quality of these proposals. One concern is the possible role of alleged raiders in preparing them. The Duma proposal was apparently prepared primarily by Gudkov, while the NACC Report identifies one of its authors as G.A. Shantin, a Senior Investigator with the MVD Investigative Committee. Both Gudkov and Shantin have themselves been accused of raiding. For example, former Duma Deputy Maksim Vasiliev has recently accused Shantin and Gudkov of conspiring to fabricate a criminal case against him in order to help raiders steal several of his businesses. Vasiliev specifically alleges that Gudkov wrote an official DeputyQs request (deputatstskii zapros) to MVD Minister Nurgaliev demanding that a criminal case be opened against him (an allegation that Gudkov does not deny) and that Shantin then conducted the investigation in a corrupt manner,

culminating with the fabrication of criminal charges.

¶15. (SBU) Vasiliev's claims appear to have some basis. Our monitoring of his prosecution (which has included observation of the trial in Basmanny District Court and conversations with both his lawyers and one witness) causes concern. For example, four of the MVD officers involved in the investigation were themselves criminally prosecuted for violations committed during the investigation. Moreover, the charges against Vasiliev appear to be little more than allegations of civil breach of contract and his pre-trial detention, which has lasted for over a year, appears to be based on testimony coerced from his father that Vasiliev was attempting to flee by attending a baptism in a monastery while police were looking for him.

¶16. (SBU) Furthermore, the fact that Gudkov's legislative co-sponsors, Lugovoi and Khinshteyn, are themselves the subjects of considerable suspicion is troubling. Lugovoi has been charged by British authorities with the 2006 poisoning murder of Aleksander Litvinenko and contacts tell us that Khinshteyn, a journalist, is notorious for publishing defamatory articles for money.

COMMENT

¶17. (SBU) Of course, the shady reputations of a law's authors do not alone provide a basis for condemning the law. However, when combined with the NACC's statements appearing to justify raiding tactics by minority shareholders, the NACC's stated concerns that penalties for raiding not be too harsh, and the fact that the legislation appears to have been drafted in a way that would make it unusable, there appears to be a basis for concern that some involved in the drafting process may be attempting to influence it for corrupt ends.

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